1775.

SUPREME COURT OF THE UNITED STATES.

No. 85.

THE UNITED STATES, APPELLANT,

VERSUS

GEORGE FLEMMING'S HEIRS.

APPEAL FROM SUPERIOR COURT OF EAST FLORIDA.

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Before the honorable the Judge of the superior court for the eastern district of Florida, and specially authorized by law to receive and adjudicate claims and titles to land in the district of East Florida:

Be it remembered that, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Sophia Flemming, widow of George Flemming, deceased, Lewis Flemming, George Flemming, and Mary Flemming, heirs of said George Flemming, deceased, by John Lee Williams, their attorney, brought and filed in the clerk's office of the superior court for the eastern district of Florida, their petition or claim to certain lands therein mentioned; which said petition or claim is in the words and figures following, to wit:

PETITION FOR CONFIRMATION.

To the honorable Joseph L. Smith, judge of the superior court of the eastern district of Florida:

The petition of Sophia Flemming, widow of George Flemming, deceased, Lewis Flemming, Mary Flemming, and George Flemming, heirs of said George, respectfully shows, that your petitioners claim title to twenty thousand acres of land situate on the west side of Indian river, at the mouth of St Sebastian's river, in the district of East Florida aforesaid, bounded as follows, to wit: commencing at a cabbage palm south of the mouth of St. Sebastian's, and running thence south forty five degrees west, four hundred and seventeen chains, to a pine; thence north forty five degrees west, four hundred and eighty chains, to a stake; thence north forty-five degrees east, four hundred and seventeen chains, to a cabbage palm on the west bank of Indian river, above the mouth of St. Sebastian's; thence, down the west bank of Indian river to the place of beginning; and is within the jurisdiction of this court.

And your petitioners further show, that the above described tract of land was granted to the said George Flemming on account of distinguished and extraordinary services rendered, both personally and in a pecuniary manner, in the defence of the province of East Florida. The first grant was made by Governor Kindelan; it was afterwards approved by the King of Spain, and a royal title issued by Governor Coppinger, on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixteen; and they further show that they were citizens of this province at the time of the exchange of flags between the King of Spain and the United States, and so have continued to this time; that they have presented this claim to the Board of Land Commissioners of East Florida, which board was constituted under an act of Congress passed on the eighth day of May, in the year of our Lord one thousand eight hundred and twenty-two, for the purpose of settling the titles to lands in the said district, and the said board approved of the title, with the exception that they were not satisfied that the governors of Florida had a right to convey tracts of land to that extent; and that they have not reported the same as antedated or forged. Their case is embraced in the treaty made between the United States and the King of Spain, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, and there has been no legal decision, nor any other matter to bar their claim, or to prevent an adjudication thereof.

Your petitioners therefore pray that the validity of their title may be examined by this honorable court, agreeably to the act of Congress in such case made and provided, and that a copy of this petition, with a citation, be served on Thomas Douglass, esquire, the attorney for the United States for said district, and that the United States be made a party thereto; and that, on a final hearing of this cause, a decree may be made confirming to your petitioner the land in question. And your petitioners will ever pray, &c.

JOHN LEE WILLIAMS,
Attorney for Petitioners.

A copy of the above *petitioner*, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the attorney of the United States for the same district: and the return of the said marshal thereon is in

the words and figures following, to wit: "Executed this 26th day of June, 1829, by leaving copy with Thomas Douglass, esquire"

ISRAEL SMITH, *Dep. Mar.*

And afterwards, to wit, on the twentieth day of July, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglass, esquire, United States' attorney for the district of East Florida, brought and filed in the clerk's office aforesaid his answer to the said petition; which said answer is in the words and figures following, to wit:

ANSWER OF UNITED STATES' ATTORNEY.

Superior Court, November term, 1829.

THE UNITED STATES OF AMERICA *ads.* SOPHIA FLEMMING and others.

The answer of Thomas Douglass, United States' attorney for the district of East Florida, to the petition or bill of complaint of Sophia Flemming, widow of George Flemming, deceased, Lewis Flemming, Mary Flemming, and George Flemming, heirs of the said George Flemming, deceased.

The said attorney, in the name and for and on behalf of the same United States, saving and reserving to them now and at all times hereafter all and all manner of benefit of exception to the manifold errors, defects, and irregularities in the said petition or bill of complaint contained, for answer thereunto, or unto so much thereof as it is material and necessary for them to answer unto, answereth and saith that, whether any such grant of twenty thousand acres of land was ever made by the said Governor Kindelan to the said George Flemming on account of his distinguished and extraordinary services rendered both personally and in a pecuniary manner in the defence of the province of East Florida, as is in the said petition or bill of complaint alleged or described; or whether the said George Flemming ever rendered any such distinguished and extraordinary services, or whether a royal title was issued by Governor Coppinger for the said tract of land, this respondent has no knowledge, except what he has derived from a perusal of the petition or bill of complaint aforesaid, and cannot, therefore, either admit or deny the same, but respectfully prays this honorable court to require of the said petitioners due proof of the making, execution, and delivery to the said George Flemming of the said first grant, by the said Governor Kindelan, and of the rendition of the said distinguished and extraordinary services by the said George Flemming, in the defence of the said province of East Florida as aforesaid, and when and where they were rendered, and in what they consisted, and the making and execution of the said royal title by the said Governor Coppinger, if any such grant or royal title was ever made, or any such distinguished or extraordinary services were ever rendered, and of all the matters and things in the said petition or bill of complaint alleged and set forth, as they are therein stated, according to law and the usages of courts of equity.

And this respondent avers that if any such grant or royal title was ever made, as in said petition or bill of complaint is alleged, the same were made contrary to and in violation of the laws, ordinances, and royal regulations of the Government of Spain, which were in force in the said province of East Florida at the time when the said supposed grant and royal title are alleged to have been made as aforesaid, providing for the granting of lands

in its provinces, of which said provinces the said East Florida was then one, and without any power or authority on the part of the said Governor Kindelan to make the said supposed grant, or on the part of the said Governor Coppinger to make the said supposed royal title, and, if made as aforesaid, they, nor either of them, were ever approved by the King of Spain, and that they were and are entirely null and void, as will more fully appear by reference to the aforesaid laws, ordinances, and royal regulations, to all of which this respondent prays leave to refer and read on the hearing of this cause.

And this respondent farther saith, that, at the time when the said grant is alleged to have been made as aforesaid, no power had been conferred by the Government of Spain upon the said Governor Kindelan to make grants of land in East Florida of the magnitude and description of the one now claimed by the petitioners aforesaid in this suit, nor had any power been conferred by the said Government upon the said Governor Coppinger to make royal titles to such grants, in East Florida, at the time when the said supposed royal title is alleged to have been made as aforesaid: and this respondent further prays this honorable court that the said petitioners may be required to show and prove, on the hearing of this cause, the specific power which had been conferred (if any such powers had then been conferred,) by the Spanish Government upon the said Governor Kindelan, at the time when the said supposed grant is alleged to have been made, to make grants of land in East Florida, and particularly that they may be required to show and prove the specific powers under which he claimed to act in making the said supposed grant, if any such was made by him, and, also, the specific powers under which the said Governor Coppinger claimed to act in making the said royal title, if he ever made any such royal title to said lands.

And this respondent farther avers, that, if the said George Flemming ever had any such grant for the said twenty thousand acres of land, as is in said petition or bill of complaint alleged and set forth, and if the said Governor Kindelan had been invested with competent power and authority to make it, and if the said Governor Coppinger had been invested with like authority to make a royal title therefor, in manner and form as aforesaid, which is not admitted, the said George Flemming and the said petitioners have, by a total neglect and failure to occupy, cultivate, or improve the same in any manner whatever for a long space of time, to wit, for the space of more than twelve years last past, wholly forfeited and lost all right and title (if *any* they or either of them ever had,) thereto. And this respondent suggests that, if the said petitioners have any grant for the said tract of land, it was made since the twenty fourth day of January, in the year 1818; and that it is consequently rendered entirely null and void by the provisions of the latter clause of the eighth article of the treaty made and concluded on the twenty-second day of February, 1819, by and between the said United States and the said Government of Spain, as will more fully appear by reference to the said treaty.

And this respondent farther avers, that, at the time when the said supposed grant and royal title are alleged to have been made as aforesaid, it was, and for a long space of time had been, the fixed and settled policy of the Government of Spain aforesaid to parcel out its colonial domain in reference solely to the objects of increasing the population of its provinces, and of benefitting its indigent subjects; and that, according to that policy, grants for the purpose of speculation were never approved or tolerated by

the said Government of Spain, and that the said supposed grant was obtained (if it was obtained at all,) for purposes of speculation.

And this respondent admits that the said petitioners have presented their claim aforesaid to the Board of Land Commissioners in the said petition or bill of complaint mentioned, and that the said Board of Land Commissioners have reported thereon, as the said petitioners have in their said petition or bill of complaint alleged, and that there has been no legal decision, or any other matter, except as aforesaid, to bar their said claim, or to prevent an adjudication thereof.

And now, having fully answered all the matters and things in the said petition or bill of complaint contained and alleged, the said attorney prays that the said United States may be hereof discharged, and that their reasonable costs and charges by them in and about the defence of this suit paid, laid out, and expended, may be adjudged and decreed to them, &c.

THOMAS DOUGLASS,
United States' Attorney, &c.

And afterwards, to wit, on the thirtieth day of July, in the year of our Lord one thousand eight hundred and thirty, the said Sophia Flemming and others, by their attorney, brought and filed in the clerk's office their replication; which said replication is in the words and figures following, to wit:

REPLICATION.

Superior court of the eastern district of Florida, St. John's county, to wit:

The replication of Sophia Flemming, widow, and Mary, Lewis, and George Flemming, heirs of George Flemming, deceased, to the answer of Thomas Douglass, esquire, attorney for the United States, defendant:

And these replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifest errors, uncertainties, and insufficiencies in the answer of the defendant, for replication thereto say, that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer thereunto is very uncertain, evasive, and insufficient in the law to be replied unto by these replicants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove, as this honorable court shall order and direct; and humbly pray, as in and by their said bill they have already prayed, &c.

JOHN LEE WILLIAMS, *for Comp.*

Document offered and received in evidence in this cause on behalf of the claimants, being the translation of the royal title in this case, made by the translator and interpreter of this court from copy furnished, and duly certified, by the keeper of the public archives for East Florida, as follows, to wit:

ROYAL TITLE TO GEO. FLEMMING FOR 20,000 ACRES. —[TRANSLATION.]

Title of property in favor of Don George Flemming, of twenty thousand acres of land, situated on the banks of the river St. Sebastian.

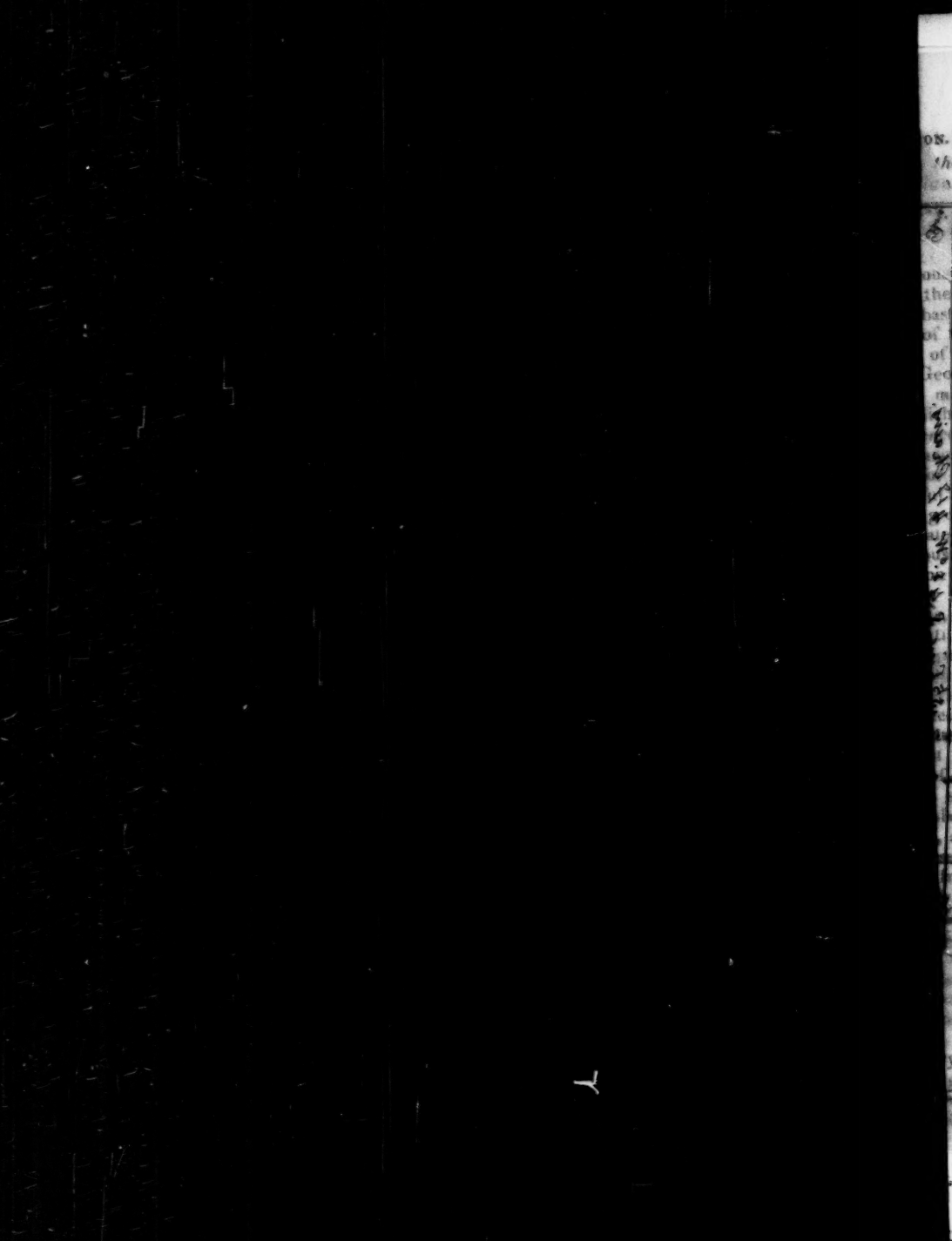
Don José Coppinger, lieutenant colonel of the royal armies, political and military governor pro tem., and chief of the royal domain, in this city of St. Augustine, Florida, and its province:

Whereas, in a royal order of the twenty ninth of March, one thousand eight hundred and fifteen, his Majesty has *been* deigned to approve the favors and rewards proposed by my predecessor, Brigadier Don Sabastian Kindelan, for the officers and soldiers, both veterans and militia, of this province, who assisted in its defence at the time of the rebellion, one of the said favors being the distribution of public lands: and as Don George Flemming, captain of the militia of the vicinity of this place, has made evident to me the distinguished and extraordinary services with which he has contributed personally, and in a pecuniary manner, to the defence of this said province at different times, with the sacrifice and abandonment of his property, like a faithful subject, worthy of every recompense for his loyalty, fidelity and patriotism; and in consideration of the powerful and well founded reasons which he has set forth in his memorial, bearing date the ninth instant, I have thought proper, by my decree of the same date, to grant his petition, that there should be granted to him twenty thousand acres of land, with a title in absolute property, at a place situated on the banks of the river St. Sabastian, to the south of the Indian river, or *Rio Ys*, and between the eastern coast of Florida and the river St Johns, reserving a clearer and more accurate description of the dimensions until he shall proceed to have the survey made by a surveyor, all of which appears more at large from the said memorial and decree which exist in the archives of the present notary. Wherefore, and in attention to said meritorious services, concurring with the sovereign will, and with what the laws recommend for rewarding, in a distinguished manner, those who may be entitled, taking into consideration the quality of the said services, and that of the persons who have performed them, I have granted, as in the name of his Majesty and his royal justice which I administer, I do grant unto the said Don George Flemming the said twenty thousand acres of land in the places pointed out, without injury to a third person, for himself, his heirs, and successors, in absolute property, and expedite to him, as by these presents I do, the corresponding title, by which I separate the royal domain from the right and dominion it had to said land, and I cede and transfer it to the said Don George Flemming, his heirs and successors, that, in consequence, they may possess it as their own, use and enjoy it without any incumbrance whatsoever, with all its entrances, outlets, uses, customs, rights, and services which it has had, has, and in fact and law belong or may appertain to it, and at their will, sell, cede, transfer and alienate it as may best suit them; to all which I interpose my judicial authority, as I can and of right ought to do, in virtue of the sovereign will.

Given under my hand, and countersigned by the undersigned notary of the Government and the royal domain, in this said city of St. Augustine, Florida, the twenty fourth of September, one thousand eight hundred and sixteen. JOSE COPPINGER.

By command of his Excellency:

JUAN DE ENTRALGO,
Notary of the Govt. and the Royal Domain.



CERTIFICATE OF SURVEY.

Translation, by Translator and Interpreter of the Court.

Don Andres Burgevin of this place, and as surveyor named by decree of this Government, made the eighth of June last past in favor of the interested: I certify that I have measured and laid off for the captain of militia, Don George Flemming, a piece of land which contains twenty thousand acres of land, situated on the banks of the river Ys and St. Sebastians, the boundaries of which are as laid down in the annexed plat. In testimony whereof, I give these presents, which I sign in St Augustine, Florida, the 3d February, 1820.

ANDRES BURGEVIN.

This is a copy of the original, to which I refer.

ANDRES BURGEVIN.

INTERROGATORIES TO CHAS. ROBIOU AND WM. TRAVERS.

Testimony offered, received, and read in evidence in this cause, on the hearing thereof, on behalf of the said claimants, to wit:

The Widow and Heirs of George Flemming, deceased, *vs.* The United States of America. } *Superior Court of the Eastern District of Florida.*

Interrogatories to be propounded to William Travers and Charles Robiou, to be read in evidence on the trial of the above cause, to be taken by consent before the mayor of St. Augustine, John Gray, junior, esquire.

First. Were you acquainted with George Flemming, deceased, during his lifetime? If yea, state where and when, the time of his death, the name of his widow and heirs, and whether all or which of them are still living?

JOHN LEE WILLIAMS, *Sol. for Comp't.*

Cross interrogatories to be propounded to the above named witnesses, on behalf of the United States.

First. If you answer the above interrogatory in the affirmative, please to state whether you have a personal knowledge of all the heirs of the said George Fleming; and if yea, when and where you became acquainted with them, and each of them, and where such are now living?

THOMAS DOUGLASS, *United States' Attorney.*

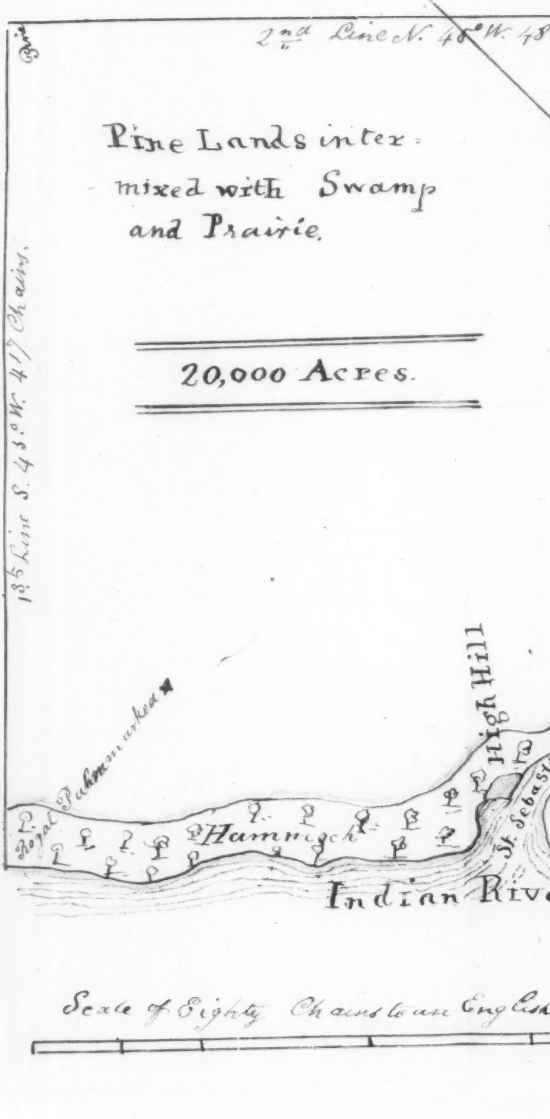
The Widow and Heirs of George Flemming, deceased, *vs.* The United States of America.

On the fifth day of May, 1832, I caused to come before me the witnesses named in the within interrogatories, between the hours of two and five o'clock, P. M. at my office, in the city of St. Augustine, East Florida, who, being severally sworn true answers to make to the said interrogatories, depose and say, as follows:

TESTIMONY OF CHAS. ROBIOU.

Charles Robiou, the first witness examined on the said interrogatories, which were read over to him, answers and says:

To the first interrogatory he says: I was—he died in 1821—his widow's name is Sophia—his heirs Lewis, George, and Mary, who are all alive.


2nd Line N. 48° W. 48
Pine Lands interx-
mixed with Swamp
and Prairie.
20,000 Acres.
18 Line S. 43° W. 41 Chains.
Palmetto marsh
High Hill
Hammock
Indian Rive
Scale of Eighty Chains to an Englis

W. 480 Chains
Store
3d Line N. 45° E. 417 Chains
Hammock
Hammock
High Pine
Land & Scrubs
High Hill
St. Sebastian
Hammock
River.
Eng. Cask Inch.

To the cross-interrogatory, he answers as follows, to wit: I have already answered this question above. I became acquainted with the heirs many years ago.

CHAS. ROBIOU.

Sworn to before me, this 5th May, 1832.

J. GRAY, Jr., *Mayor.*

TESTIMONY OF WILLIAM TRAVERS.

William Travers, the second witness in the above case, being examined on the said interrogatories, which were read over to him, answers and says:

To the first interrogatory, he says: Yes—at St. Augustine—died during the year 1821—his widow's name Sophia—his heirs, Lewis, George, and Mary, are still living.

To the cross-interrogatory, he answers: he knows the heirs personally, and have for many years, to wit, Lewis, George, and Mary Flemming.

WILLIAM TRAVERS.

Sworn to before me, this 7th May, 1832.

J. GRAY, Jr., *Mayor.*

And afterwards, before the Superior Court for the eastern district of Florida, holden at the court-house, in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-two, to which term this cause had come by regular continuance, to wit, on Tuesday, the eighth day of said term, and the fifteenth of said month, the following decree of confirmation was entered of record in this cause, to wit:

DECREE OF CONFIRMATION.

SOPHIA FLEMMING, widow of George Flemming, deceased, and LEWIS FLEMMING, MARY FEEMMING, and GEORGE FLEMMING, heirs of said George Flemming, deceased, *against* THE UNITED STATES OF AMERICA. } *Land claim*, 20,000 *acres.*

Whereas Sophia Flemming, widow of George Flemming, deceased, and Lewis Flemming, Mary Flemming, and George Flemming, heirs of said George Flemming, deceased, did, in pursuance of the act of Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and approved 23d day of May, 1828, on the 22d day of May, 1829, file their petition for the confirmation of certain lands therein mentioned, in the clerk's office of the Superior Court for the eastern district of Florida: And whereas the attorney of the United States for this district did duly appear and answer said petition, and this cause coming on to be heard this day, the said claimants, by their counsel, offered in evidence a copy from the office of the keeper of the public archives of the original grant on which this claim is founded, to the receiving of which in evidence, the said attorney for the United States objected, alleging that the original grant *itself* should be produced, and its *execution* proved, before it could be admitted in evidence, and that the original only could be received in evidence; which objection was overruled by the court, and the copy from the office of the keeper of the public archives, certified according to law, was ordered to be received in evidence; and the court further ordered, that though by the express statute of this

Territory, copies are to be received in evidence, yet in cases where either the claimant or the United States shall suggest that the *original*, in the office of the keeper of the public archives, is deemed necessary to be produced in court, on motion therefor, a subpœna will be issued by order of the court, to the said keeper, to appear and produce the said original in court for due examination there; and such proceedings being had herein as that this claim was submitted to the court for its decree thereon, and the said court having examined the claim of the said petitioners, and the answer of the attorney of the United States, together with the exhibits filed herein, and having maturely considered the same, doth *order*, *adjudge* and *decree*, that this claim is valid, and that in accordance with the laws and customs of Spain, and under and by virtue of the late "treaty of amity, settlement, and limits, between the United States of America and the King of Spain," ratified by the President of the United States on the 22d February, 1821, and under and by virtue of the laws of nations and of the United States, it is hereby *confirmed*, *adjudged*, and *decreed*, unto the said claimants, to the extent, and agreeably to the boundaries, as set forth in the grant for the same, filed herein, to wit: twenty thousand acres of land at a place situated on the banks of the river St. Sebastian, to the south of the Indian river, or *Rio Ys*, and between the eastern coast of Florida and the river St. Johns.

And afterwards, before the Superior Court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of October, in the year of our Lord one thousand eight hundred and thirty-two, to wit, on Friday, the fifth day of said term, and the fifth of said month, the following appeal was entered of record in this cause, to wit:

APPEAL.

SOPHIA FLEMMING and OTHERS, *against* THE UNITED STATES OF AMERICA. } *Land claim*, 20,000 *acres*.

This day came Thomas Douglass, esquire, attorney of the United States for this district, and moved the court that an appeal be granted in this case, on behalf of the said United States, from the decree of this court to the Supreme Court of the United States; which is granted accordingly.

And afterwards, before the Superior Court for the eastern district of Florida, holden at the court-house, in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-three, to wit, on Monday, the eighteenth day of said term, and the tenth of June, the following entry of record was made in this cause, to wit:

REVIVAL OF APPEAL.

THE UNITED STATES, *ats.* SOPHIA FLEMMING and OTHERS. } *Land claim*, 20,000 *acres*.

Now, on this day came Thomas Douglass, esquire, United States' attorney for the district of East Florida, and suggests to the court now here, that, since the granting of the appeal in the above cause to the Supreme Court of the United States, a term of said court has intervened, and that the record herein has not been sent up to the said court: wherefore, the said attorney on behalf of the same United States prays that the said appeal may be revived, and the order therefor extended, a copy of the record in said

cause duly certified, may be sent up to the said Supreme Court before the first day of the next term thereof, to be holden on the second Monday of January next, and that citation, with notice of said appeal, may be forthwith issued by the clerk of this court to the appellees, and that the same may be served by the marshal of said district upon the said appellees or their solicitor or agent, and returned to this court within thirty days from the issuing thereof; which is ordered accordingly.

And afterwards, on the eleventh day of June, in the year 1833, a citation of appeal, in pursuance of the above order, was issued in this case; which citation, and the return of the marshal of this district thereon, are in the words and figures following, to wit:

CITATION OF APPEAL.

In the name and by the authority of the United States of America:

To Sophia Flemming and others, heirs of George Flemming, deceased, or to their agent, attorney, or solicitor, greeting:

You are hereby cited and admonished that an appeal has been taken on the part of the United States from the decree of the Superior Court for East Florida, to the Supreme Court of the said United States, in a certain claim to twenty thousand acres of land, wherein you, the said Sophia Flemming, and others are claimants, and the said United States respondent; and that the record in said cause will be forwarded to the said Supreme Court, to be placed on the docket of said court at the next term thereof, to be holden on the second Monday of January next.

Witness, the honorable Robert Raymond Reid, judge of our said Superior Court, at the court-house in the city of St. Augustine, this eleventh day of June, A. D. 1833. [L. S.]

GEORGE GIBBS, *Clerk.*
Per K. B. GIBBS, *Dep. Cl'k.*

THOS. DOUGLASS, *U. S. Att'y for E. Florida.*
J. L. WILLIAMS, *Att'y for Claimant.*

"Served, by delivering a true copy to the within named Sophia Flemming, June 22d, 1833.

"SAMUEL BLAIR, *Marshal.*"

SUPERIOR COURT, *District of East Florida*, to wit:

I, George Gibbs, clerk of the said court for the district aforesaid, do hereby certify that the foregoing twenty-two pages contain a full, true, and complete transcript of the record and proceedings had in the case therein named in my charge; and that the survey and certificate herein included, and made a part of this record, is faithfully taken and copied from the said documents, as offered in evidence in said cause, on file in my office.

In testimony whereof, I have hereto set my hand, at the city of St. Augustine, this first day of July, one thousand eight hundred and thirty-three.

GEO. GIBBS, *Clk.*

By the honorable Robert Raymond Reid, Judge of the Superior Court for the District of East Florida:

To all to whom these presents shall come, be seen, or made known, greeting:

Know ye, that George Gibbs, who hath signed the foregoing attestation,

is clerk of the Superior Court for the district of East Florida; that all due faith and credit are and ought to be given to his acts as such, and that the foregoing attestation is in due form of law.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said court to be hereunto affixed, this first day of July, A. D. 1833, and of the independence of the United States of America the fifty-seventh.

[L. S.] ROBT. RAYMOND REID.